



STATE OF CONNECTICUT  
OFFICE OF POLICY AND MANAGEMENT

WRITTEN TESTIMONY PRESENTED TO THE JUDICIARY COMMITTEE  
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Marc Pelka  
Undersecretary, Criminal Justice Policy and Planning  
Office of Policy and Management

House Bill 5019: AN ACT CONCERNING FAIR FUTURES FOLLOWING CRIMINAL  
RECORD ERASURE

Senate Bill 403: AN ACT CONCERNING THE BOARD OF PARDONS AND PAROLES,  
ERASURE OF CRIMINAL RECORDS FOR CERTAIN MISDEMEANOR AND FELONY  
OFFENSES AND PROHIBITING DISCRIMINATION BASED ON ERASED CRIMINAL  
HISTORY RECORD INFORMATION

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Senator Winfield, Representative Stafstrom, Senator Kissel, Representative Rebimbas, and distinguished members of the Judiciary Committee:

Thank you for the opportunity to testify in support of Governor Lamont's proposal, **HB 5019, *An Act Concerning Fair Futures Following Criminal Record Erasure.***

**Background**

In most cases, a criminal conviction in Connecticut remains permanently on a person's record regardless of the seriousness of the offense, the age of the conviction, or the individual's progress toward rehabilitation. Because of well-documented racial and ethnic disparities in the criminal justice system, the permanence of most criminal convictions disproportionately affects communities of color.<sup>1</sup> As a result, an individual's criminal record can hinder his or her ability, long after completing a sentence, to obtain an education, employment, professional licensure, public benefits and housing.<sup>2</sup> These statutory and regulatory barriers are called "collateral consequences" of a criminal conviction, of which there are 558 cited in Connecticut statutes.<sup>3</sup>

Under current law, there are two methods by which an individual can get his or her criminal record erased by the Board of Pardons and Paroles (BOPP). The first method, for which people with virtually all types of convictions are eligible, requires the individual to submit a pardons application and have a full, in-person hearing before the BOPP.

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<sup>1</sup> The Sentencing Project. "Racial Disparity." <https://www.sentencingproject.org/issues/racial-disparity/>

<sup>2</sup> National Inventory of Collateral Consequences of a Conviction. "Searchable Database."  
<https://niccc.csgjusticecenter.org/database/>

<sup>3</sup> Ibid.

The second option, for which people with non-violent convictions are eligible, provided there is no victim interest in the case, is an expedited process, and requires the individual to submit a pardons application but not to appear for an in-person hearing before the BOPP.

HB 5019 adds a third way for people with criminal convictions to get their records erased. Under this proposal, convictions for low-level misdemeanors will be erased *automatically* after a waiting period. There is no requirement that the individual appear in-person before the BOPP or even submit a pardons application at all. This extends relief to people who haven't availed themselves of the pardons process for a variety of reasons, including challenges navigating the petition process, a lack of awareness that the option exists, or concern about reengaging with the criminal justice system.

While this bill creates a new option for relief for individuals with criminal records, it does not remove any of the existing erasure options. Instead, this legislation aims to add another layer to the current system – a backstop of sorts – that will automatically erase an individual's low-level conviction if they were not able to avail themselves of the pardons process prior to the automatic erasure kicking in.

### **A Process for Automated Erasure of Criminal Records**

Existing law already provides automated erasure of criminal charges that result in acquittal, dismissal, or nolle. Under current law, erasure generally means that information, while remaining physically present in electronic records system, is unsearchable and, thus, wouldn't appear in a background check. The record still may be obtained by criminal justice agencies, such as law enforcement, under special circumstances. When a record is erased currently, such as after a nolle, notification is provided across criminal justice agencies through a largely automated process. By applying this automated framework to criminal convictions that, due to their being low-level, do not warrant a full BOPP review, the BOPP can focus on investigation, analysis, and review of more complicated cases.

Since the end of the last legislative session, the administration has worked intensively with staff from DESPP, the Judicial Branch, the Criminal Justice Information System (CJIS), and other agencies to develop an automated process to erase electronic criminal records for eligible convictions and disseminate record-erasure notifications to all relevant criminal justice agencies. The October 1, 2021 effective date was selected to align with the rollout of new criminal records repository at DESPP and to allow adequate time for planning before the first automated erasure occurs.

To support the creation of this automated process under HB 5019, approximately \$2 million has been included in the Governor's budget from the IT Capital Investment Program bond authorization to address system costs at the implementing agencies – DESPP, CJIS, and the Judicial Branch.

### **The Permanent Impact of Misdemeanor Convictions**

Misdemeanor records are important to erase because of the sheer volume of such convictions in our state. Most people who go to court in Connecticut have been charged with a misdemeanor. In

2019 alone, misdemeanors made up three quarters of all total charges (30,178 of 40,314) receiving a conviction in Connecticut.<sup>4</sup>

These misdemeanor convictions have a real impact on people's lives. Connecticut statutes include no fewer than 115 collateral consequences related to misdemeanor convictions.<sup>5</sup> Although maximum sentence lengths and fines for misdemeanors are lower than those for felonies, they remain on a person's record permanently. In fact, unless these convictions are erased, they will remain on a person's record for 110 years, according to the current Connecticut State Library, Office of the Public Records Administrator, Record Retention Schedule for the Department of Emergency Services and Public Protection (DESPP).

When a person with a misdemeanor conviction applies for a job, housing, or an occupational license, and a criminal background check is conducted, the decision-maker will see that misdemeanor conviction. Even if a person with a conviction is the ideal candidate in the eyes of human resources and management, company policy may prohibit the hiring of anyone with a conviction – *regardless* of the severity of the crime. Twenty-six percent of respondents to a 2012 of human resource professionals survey indicated that a nonviolent misdemeanor conviction would be influential regarding whether to extend a job offer. Although the percent responding as such was higher for applicants with more serious convictions, the response to nonviolent misdemeanors indicated these convictions have an effect on hiring.<sup>6</sup> Even if there is no such explicit policy prohibiting the hiring of an individual with a conviction, employers may assume their company will be at risk of being sued for negligent hiring if they hire someone with a record, and therefore will not take a chance on them.

### **Scope of the Bill**

Offenses covered in HB 5019 include:

- a) **Class C Misdemeanors** except for avoidance or interference with an ignition interlocking device (C.G.S 14-227k), unlawful discharge of a firearm (C.G.S 53-203), loitering in or about school grounds (C.G.S 53a-185), and drinking while operating a motor vehicle (53a-213);
- b) **Class D Misdemeanors;**
- c) **Convictions for Drug Possession, specifically:**
  - o Prior to October 1, 2015, convictions for possession of less than four ounces of cannabis or non-narcotic, non-hallucinogenic controlled substances (C.G.S 21a-279(c)); and

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<sup>4</sup> Based on information the Judicial Branch provided to the Office of Policy and Management.

<sup>5</sup> Ibid.

<sup>6</sup> "Background Checking—The Use of Criminal Background Checks in Hiring Decisions," Social for Human Resource Management, "July 19, 2012: <https://www.shrm.org/hr-today/trends-and-forecasting/research-and-surveys/pages/criminalbackgroundcheck.aspx>.

- On or after October 1, 2015, convictions for possession of less than 4 ounces of any controlled substance (C.G.S 21a-279a).

For eligible offenses, automated erasure occurs seven years after the person's most recent conviction. This ensures that a meaningful waiting period occurs following the conviction, as the maximum jail sentence for a Class D misdemeanor is thirty days, and the maximum jail sentence for a Class C misdemeanor is three months. Recidivism studies in numerous states, including OPM's analysis of the Connecticut population, indicate that recidivism is highest in the initial years following release from prison, especially in the first two years, before flattening.<sup>7</sup> Moreover, a 2012 study found that the probability of re-arrest for someone who offended at age 18 equals that of the general population between 3.8 and 7.7 years later, depending on the offense.<sup>8</sup>

Erasure for possession convictions prior to October 1, 2015 will be cleared automatically without a waiting period, consistent with another legislative priority of the administration, **SB 16, *An Act Concerning the Adult Use of Cannabis***.

Erasure of drug possession convictions is a priority for the administration because of the disparate impact these types of convictions have had on racial and ethnic minority communities in Connecticut and nationally. Connecticut has been – and continues to be – a leader on addressing these disparate impacts. For example, possession of controlled substances was still considered a felony offense as recently as 2015, when all drug possession charges were reclassified as misdemeanors. Under this automated process, these records will be erased regardless of whether they were classified as a felony or misdemeanor at the time of the conviction.

Further, unlike delivery or manufacturing convictions, possession convictions are for *individual possession and use* of a controlled substance. For people who have struggled with a substance addiction disorder, automated clearance will enable them to get on the path to recovery without being held back by unnecessary barriers to employment and housing.

Finally, in addition to noting what HB 5019 *includes*, it is important to note that the bill intentionally *excludes* the following categories of offense: (1) offenses involving bodily harm, (2) family violence crimes, (3) sexual offenses, (4) stalking, (5) firearms-related offenses, and (6) driving under the influence of alcohol or drugs. Most of the offenses listed above that were explicitly excluded from the Class C misdemeanor were removed because they fell into one of these categories.

### **Three factors informing HB 5019's scope.**

First, it was our goal to retain the existing pardons process for most convictions, especially the more serious and complex cases. In most cases, the offenses excluded from HB 5019 are eligible to be brought by a petitioner to the pardon process, including an expedited review. Connecticut is one of only 13 states that has been praised as having a “frequent and regular pardon process.” The

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<sup>7</sup> OPM Criminal Justice Policy and Planning Division, *Recidivism, 2017-Release Cohort*, February 2020: <https://portal.ct.gov/-/media/OPM/CJPPD/CjResearch/RecidivismStudy/2020-Recidivism-Report-2017-Cohort.pdf?la=en>.

<sup>8</sup> Alfred Blumstein and Kiminori Nakamura, “‘Redemption’ in an era of widespread criminal background checks,” National Institute of Justice Journal: <https://www.ncjrs.gov/pdffiles1/nij/226872.pdf>.

remaining states are assessed as “sparing” (8 states), “infrequent” (12 states), or “rare” (19 states).<sup>9</sup> As part of the comparison of pardons authorities, Connecticut was found to be “one of the few states with a productive and accessible pardon process, and the number of grants in recent years has increased with a new authority to dispense with the requirement of a formal hearing, and a lesser form of relief aimed at employment and licensing barriers.”<sup>10</sup>

Second, it was our goal to create a system that would overcome the limits inherent in the existing pardons process, which places the burden on the individual and was not designed at an adequate scale to address the number of convictions that have accrued over time in Connecticut. From 2015 to 2019, the BOPP issued, on average, 677 pardons per year, while last year there were 7,736 convictions of Class C and D misdemeanor charges alone.<sup>1,2</sup> **In other words, there are more than 11 times as many convictions for C and D misdemeanors as there are pardons granted in a year.** The proposal’s scope, covering both C and D misdemeanors as well as drug-possession convictions, gives a sense of the potential scale of impact – **tens of thousands of records will be cleared on day one.**

Rate of charges receiving a conviction that involve a person of color was analyzed in developing this policy. While Black or Hispanic people comprise approximately 29 percent of the state resident population, people from these communities are over-represented in the Class C and D misdemeanors covered by the bill, with differences as large as 34 and 40 percentage points above from their representation the state resident population.<sup>11,12</sup>

Third, it was our goal to establish an automated process that can be implemented in a seamless, effective way that learns from the experiences of other states. To that end, Connecticut has been selected to receive technical assistance, during both planning and implementation, from Code for America, a national nonprofit organization that has assisted other states that have enacted or are examining clean-slate policy. The hardest part of enacting a concept like clean slate is building the technical foundation for automated erasure. Dedicated planning has occurred to do this and will need to continue to prepare for and execute exchanges across technology systems, but, as with every major technological advancement, there will no doubt be the inevitable glitches. While we will work diligently to minimize such occurrences, it is important to pursue change incrementally. After the foundation is completed, it will be much easier to work on adding floors.

### **Making the Pardons Process Fairer and Holding Private Background Check Companies Accountable**

HB 5019 improves the integrity of criminal-record information shared with private background check companies and other third parties. It requires private companies’ records to be updated at least every 30 days to ensure that erased records are permanently deleted from their databases.

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<sup>9</sup> Ibid. <http://ccresourcecenter.org/state-restoration-profiles/50-state-comparisonpardoning-practices/>. The federal system and the District of Columbia are included in the count.

<sup>10</sup> “Connecticut Restoration of Rights and Record Relief,” Restoration of Rights Project, <http://ccresourcecenter.org/state-restoration-profiles/connecticut-restoration-of-rights-pardon-expungement-sealing>.

<sup>11</sup> “Quick Facts – Connecticut,” US Census Bureau, <https://www.census.gov/quickfacts/fact/table/CT/AGE295218#AGE295218>

<sup>12</sup> Based on information provided by the Judicial Branch.

**Remainder of  
Testimony  
available for  
public review in**

**Judiciary Committee  
Room 2500**